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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David J. Roach et al.

PATENT APPLICATION

Serial No.: 09/556,897

Group Art Unit: 1743

Filed: April 20, 2000

Examiner: Patricia K. Bex

For: ROBOTIC MICROCHANNEL

BIOANALYTICAL INSTRUMENT

Response to Office Action

Assistant Commissioner for Patents

Washington, D.C. 20231

Sir:

In response to the Office action mailed December 9, 2002, the applicants respectfully request reconsideration in light of the following remarks.

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Remarks

The sole issue is whether the applicants' claims are rendered obvious by the cited art. Additional research into the cited art reveals that one of the cited references is not prior art. As such it would be proper to withdraw the present rejection.

An analysis for obviousness requires an initial determination of the scope of the prior art. See *Graham v. John Deere*, 383 US 1,, 148 USPQ 459 (1966). Subject matter that is prior art under 35 USC 102 can be used to support a rejection under section 103. *Ex parte Anderson* 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981).

A patent document must be available to the public to constitute prior art. (See MPEP § 2126). The patent is